

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen Abrams-Downey	Team: Squad #1	CCRB Case #: 201412022	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/18/2014 7:55 PM	Location of Incident: Grissom Avenue & Rockland Avenue; the 121st Precinct Stationhouse	Precinct: 121	18 Mo. SOL 5/18/2016	EO SOL 5/18/2016	
Date/Time CV Reported Sat, 11/22/2014 1:47 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/01/2014 1:47 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Clyde Moyer	4072	946038	NARCBSI
2. DT3 Mathew Reich	00122	933211	NARCBSI

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Mark Scarlatelli	06287	937502	NARCBSI
2. DT3 Michael Fahmy	01434	936561	NARCBSI

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Clyde Moyer	Abuse: Det. Clyde Moyer stopped the car in which and § 87(2)(b) was an occupant at Grissom Avenue and Rockland Avenue.	
B.DT3 Mathew Reich	Abuse: Det. Mathew Reich stopped the car in which § 87(2)(b) was an occupant at Grissom Avenue and Rockland Avenue.	
C.DT3 Clyde Moyer	Abuse: Det. Clyde Moyer searched § 87(2)(b) at Grissom Avenue and Rockland Avenue.	
D.DT3 Mathew Reich	Abuse: Det. Mathew Reich searched § 87(2)(b) at Grissom Avenue and Rockland Avenue.	
E.DT3 Mathew Reich	Abuse: Det. Mathew Reich searched the car in which § 87(2)(b) was an occupant at Grissom Avenue and Rockland Avenue.	
F.DT3 Clyde Moyer	Discourtesy: Det. Clyde Moyer spoke discourteously to § 87(2)(b) at Grissom Avenue and Rockland Avenue and the 121st Precinct Stationhouse.	
G.DT3 Mathew Reich	Discourtesy: Det. Mathew Reich spoke discourteously to § 87(2)(b) at Grissom Avenue and Rockland Avenue and the 121st Precinct Stationhouse.	

### Case Summary

§ 87(2)(b) filed this complaint by phone with IAB on November 22, 2014. The complaint was referred to the CCRB on December 1, 2014 via IAB Log No. 14-38752 (IAB Log Board Review 01; Complaint Report Board Review 02).

At approximately 7:30 p.m. on November 18, 2014, § 87(2)(b) and § 87(2)(b) were riding in a tow truck near the intersection Grissom Avenue and Rockland Avenue, in Staten Island. The light was yellow but turned red when § 87(2)(b) who was driving, went through the intersection. An unmarked police van flashed its lights and § 87(2)(b) pulled over. Two plainclothes officers, identified by the investigation as Det. Clyde Moyer and Det. Matthew Reich of Narcotics Borough Staten Island, exited the van and told § 87(2)(b) and § 87(2)(b) to get out of their vehicle (**Allegations A and B**). Det. Moyer grabbed § 87(2)(b) by his shoulders as he got onto the street and leaned him against the truck. The sleeve of § 87(2)(b) jacket caught against the side of the truck and ripped. Det. Moyer then told § 87(2)(b) to raise his hands above his head. § 87(2)(b) complied and Det. Moyer put his hands inside § 87(2)(b) pants and jacket pockets, removing several items (**Allegation C**). At the same time, Det. Reich put his hands inside § 87(2)(b) pockets and removed multiple objects (**Allegation D**). Det. Reich then went inside the rear seat of § 87(2)(b) truck and moved a number of items (**Allegation E**). Det. Moyer found a prescription drug bottle in § 87(2)(b) pocket and said that he would be arrested for possession of narcotics. § 87(2)(b) told the officers that he had documentation for these drugs, but the officers did not respond to these comments. Det. Moyer and Det. Reich both called § 87(2)(b) “an asshole” and “a fuck up” during this conversation (**Allegations F and G**). § 87(2)(b) was then handcuffed and taken to the 120<sup>th</sup> Precinct stationhouse, where Det. Moyer and Det. Reich again both referred to him as “an asshole” (**Allegations F and G**). § 87(2)(b) was charged with criminal possession of a controlled substance and released the following day (Board Review 03). § 87(2)(b) statement Board Review 04).

### Mediation, Civil, and Criminal Histories

This case was not eligible because § 87(2)(b) was arrested during the incident. § 87(2)(b) filed a notice of claim for this case on § 87(2)(b) (Board Review 05). § 87(2)(b)

### Civilian and Officer CCRB Histories

- § 87(2)(b)
- This is the first CCRB complaint involving § 87(2)(b) (Board Review 08).
- Det. Moyer has been a member of service for seven years. He has had seven CCRB allegations involving three cases with no substantiated charges. § 87(2)(g) (Board Review 09).
- Det. Reich has been a member of service for eleven years. He has had sixty-four CCRB allegations involving twenty-two cases. Question, refusal to provide name and shield number, and frisk allegations have been substantiated. He was given instructions in the first two cases and formalized training in the third. Det. Reich’s cases include ten vehicle search allegations, three vehicle stop allegations, four search of person allegations, and eight discourtesy allegations (Board Review 10).

## **Findings and Recommendations**

### **Identification of Subject Officers and Pleading**

§ 87(2)(b) did not identify the subject officers by name. The descriptions he provided for them were vague and did little to differentiate between the two officers involved in this incident. However, § 87(2)(b) noted that only one officer interacted with him during the incident, while the other officer was primarily focused on § 87(2)(b). § 87(2)(b) also stated that this second officer was the only officer to enter and search § 87(2)(b) truck. In their CCRB interviews, both Det. Moyer and Det. Reich stated that Det. Moyer interacted with § 87(2)(b) while Det. Reich spoke with § 87(2)(b) (Det. Moyer CCRB interview Board Review 11; Det. Reich CCRB interview Board Review 12). Additionally, Det. Moyer wrote the Criminal Court Complaint which stated that he had first observed prescription drugs inside § 87(2)(b) pocket (Board Review 13). Based on this information, vehicle stop, property damage, search, and discourtesy allegations, reflected in Allegations A, C, and F, have been pleaded against Det. Moyer. Vehicle stop, search, vehicle search, and discourtesy allegations, reflected in Allegations B, D, E, and G, have been pleaded against Det. Reich.

### **Allegations Not Pleased**

§ 87(2)(b) stated that his jacket caught against the side of the tow truck when Det. Moyer pressed him against the vehicle. However, § 87(2)(b) did not indicate that Det. Moyer did this intentionally or knew that the jacket would rip as a result of his actions. Therefore, no property damage allegation has been pleaded against Det. Moyer.

As noted above, § 87(2)(b) alleged that Det. Reich alone entered § 87(2)(b) tow truck. However, in his CCRB interview, Det. Moyer said that he entered the truck after § 87(2)(b) told him to recover a bag which was located between the driver and passenger seats. According to Det. Moyer, § 87(2)(b) told him that this bag contained the prescriptions for his medications. Because § 87(2)(b) did not allege that Det. Moyer entered the truck and, according to Det. Moyer's testimony, § 87(2)(b) gave permission for this entry, a vehicle search allegation has not been pleaded against Det. Moyer.

### **Recommendations**

**Allegation A: Det. Clyde Moyer stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation B: Det. Mathew Reich stopped the vehicle in which § 87(2)(b) was an occupant.**

In his CCRB statement, § 87(2)(b) said that a dark unmarked Ford van flashed its lights as § 87(2)(b) drove through the intersection of Grissom Avenue and Rockland Avenue. According to § 87(2)(b) the light was yellow when § 87(2)(b) entered the intersection, but turned red while they were midway through the intersection. § 87(2)(b) was not issued a summons for running a red light.

The truck's driver, § 87(2)(b) did not provide a statement at the CCRB. Five calls were placed to § 87(2)(b) between March 9, 2015 and April 1, 2015. § 87(2)(b) answered two of these calls, but was unwilling to provide a phone statement or schedule an interview on these occasions. Emails were sent to § 87(2)(b) on March 16, 2015 and March 19, 2015 and these were not returned as undeliverable.

When interviewed, Det. Moyer and Det. Reich both stated that, they observed § 87(2)(b) tow truck drive through a steady red light at the intersection of Grissom Avenue and Rockland

Avenue. The officers stopped the truck immediately after making this observation. Both officers also testified that they used their discretion to release § 87(2)(b) with a warning, rather than issue him a summons.

§ 87(2)(b), § 87(2)(g)

**Allegation C: Det. Clyde Moyer searched § 87(2)(b)**

§ 87(2)(b) testified that Det. Moyer, after pressing him against the side of the truck, told him to raise his hands above his head. § 87(2)(b) complied and Det. Moyer asked § 87(2)(b) if he had any sharp objects in his pocket. § 87(2)(b) replied that he did not and Det. Moyer placed his hands inside his two front pants pockets, his two front jacket pockets, and two inside jacket pockets. Det. Moyer removed tissues, candy, a knit cap, gloves, a pen, paper, napkins, and a bottle of prescription pills from these pockets. According to § 87(2)(b) Det. Moyer did not ask § 87(2)(b) if he was in possession of prescription drugs prior to the search. § 87(2)(b) later attempted to show Det. Moyer a letter written by his doctor explaining that he has prescriptions for Plavix, ibuprofen, Provital, simvastatin, Vicodin, Xanax, Nasonex, Ciprodex, Tobradex, Phenergan syrup, famotidine, Ambien, and miralax due to chronic back and shoulder pain, a breathing disorder, and abdominal hernias (Board Review 14). This letter was written on August 9, 2013, more than a year before this incident occurred. In a phone statement, § 87(2)(b) explained that he wrapped the pills in tin foil in order to keep them separate while they were inside the same bottle (Board Review 15).

Det. Moyer stated that he had observed the bottom portion of the pill bottle sticking out of § 87(2)(b) right jacket pocket. He also saw that the individual pills were wrapped in tinfoil. Det. Moyer said that he had made previous narcotics arrests in which pills were wrapped in this fashion in preparation for sale. Det. Moyer stated that he was able to make these observations because § 87(2)(b) was seated in an elevated truck and his jacket pocket was near Det. Moyer's eye level. After making these observations, Det. Moyer ordered § 87(2)(b) to exit the vehicle and asked what medications were inside the bottle. § 87(2)(b) listed a number of medications. Det. Moyer placed § 87(2)(b) under arrest after he was unable to produce a prescription for these various medications. Det. Moyer maintained that he patted § 87(2)(b) down only after he had handcuffed and arrested § 87(2)(b). Det. Reich testified that he saw Det. Moyer frisk § 87(2)(b) after he was handcuffed.

The controlled substance data sheet, which was prepared by Det. Moyer, states that Det. Moyer observed § 87(2)(b) pill bottle when he first opened the passenger door of the truck (Board Review 16). According to both the data sheet and the property voucher, pills wrapped individually in tin foil were recovered by the police during this incident (Board Review 17). The pills were Alprazolam, Acetaminophen, and Hydrocodone.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation D: Det. Mathew Reich searched § 87(2)(b)**

§ 87(2)(b) testified that Det. Reich searched § 87(2)(b) at the same time that he was searched by Det. Moyer. § 87(2)(b) alleged that he heard Det. Reich order § 87(2)(b) to raise his hands over his heads. When § 87(2)(b) complied with this command, § 87(2)(b) saw Det. Reich place his hands inside § 87(2)(b) pants and jacket pockets and remove multiple items. As discussed above, § 87(2)(b) did not cooperate with this investigation and did not provide a statement to the CCRB.

In his CCRB interview, Det. Reich stated that he told § 87(2)(b) to exit the truck after § 87(2)(b) was placed in handcuffs. Det. Reich ordered § 87(2)(b) to remain next to the truck, but he did not recall if he frisked or searched him at any point in the incident. Det. Moyer stated that he did not see Det. Reich frisk or search § 87(2)(b) during their interaction.

§ 87(2)(b), § 87(2)(g)

**Allegation E: Det. Mathew Reich searched the vehicle in which § 87(2)(b) was an occupant.**

In his CCRB statement, § 87(2)(b) said that Det. Reich entered the rear seat of § 87(2)(b) truck after the officers searched him and § 87(2)(b) but before § 87(2)(b) and Det. Moyer discussed his prescription medication. § 87(2)(b) was on the sidewalk, with his back turned to the truck, and was unable to see what Det. Reich did while inside the vehicle. However, § 87(2)(b) heard Det. Reich throw multiple items around inside the truck. § 87(2)(b) also said that § 87(2)(b) later told him that several containers had been opened by Det. Reich. Among these items was a backpack belonging to § 87(2)(b) the contents of which had been thrown to the truck's floor. § 87(2)(b) did not provide a CCRB statement regarding this allegation.

Det. Reich testified that he did not recall whether he entered and searched § 87(2)(b) tow truck. However, he stated that he may have searched the seat that § 87(2)(b) had been sitting in, as well as the areas directly to the side and in front of this seat. Det. Reich said that this search would have occurred after Det. Moyer had placed § 87(2)(b) under arrest and was intended to look for any additional narcotics. Det. Moyer did not observe Det. Reich enter the truck during the incident.

Under the automobile exception to the warrant requirement, an officer may search a vehicle if he has probable cause to believe that it contain contraband or evidence of a crime. People v. Galak, 81 N.Y.2d 463 (1993) (Board Review 15).

The investigation was unable to determine whether Det. Reich searched the truck or would have been justified in searching the tow truck. If, as § 87(2)(b) alleged, Det. Reich entered the vehicle before any drugs had been recovered, this action would not be justified. Under these circumstances, Det. Reich would have had no reason to believe that there were narcotics or any other evidence of a crime inside the vehicle.

However, Det. Reich maintained that if he entered the truck he only did so once Det. Moyer had discovered narcotics and placed § 87(2)(b) under arrest. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

**Allegation F: Det. Clyde Moyer spoke discourteously to § 87(2)(b)**

**Allegation G: Det. Mathew Reich spoke discourteously to § 87(2)(b)**

§ 87(2)(b) stated that Det. Moyer told him he was under arrest after he removed the prescription pill bottle from his jacket pocket. § 87(2)(b) tried to explain that he had documentation proving he had obtained the medication legally. In response, Det. Moyer and Det. Reich both referred to him as “an asshole” and a “fuck up.” Det. Moyer and Det. Reich again called § 87(2)(b) “an asshole” after they transported him to the 120<sup>th</sup> Precinct stationhouse.

In their CCRB interviews, Det. Moyer and Det. Reich both denied calling § 87(2)(b) a “fuck up” or an “asshole” at any point in the incident. They did not hear any other officers make these remarks. Det. Mark Scarlatelli and Det. Michael Fahmy both encountered § 87(2)(b) when he was in custody inside the stationhouse. Both officers testified that they did not hear Det. Moyer or Det. Reich call § 87(2)(b) an asshole during these interactions (Det. Scarlatelli statement Board Review 16; Det. Fahmy Board Review 17).

§ 87(2)(b), § 87(2)(g)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date